IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

CRL.A.No. 141 of 1999()

CC.1277/1995 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, KANNUR

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APPELLANT: COMPLAINANT

P.K.VASU, S/O.NARAYANAN NAMBIAR,
POYYAYIL KADAYAPROTH HOUSE,
KADACHIRA P.O., KANNUR.

BY ADV. SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU

RESPONDENTS: ACCUSED
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1. K.JANAKI, PRANAVAM, NEAR VALIYAVALAPPIL KAVU, THAYATHERU P.O. , KANUUR.

2. STATE OF KERALA, REP.BY THE PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

Crl. A. No.141 of 1999

Dated 18th July, 2007

JUDGMENT

The appellant is the complainant in C.C.No.1277/1995 in the file of the JFCM-I, Kannur with respect to the offence under section 138 N.IAct. The complainant's case is that the accused borrowed a sum of Rs.35,000/- on 11-7-95 promising to repay the same on 14-11-95 and towards the same, she issued the impugned cheque on 14-11-95, which when presented got dishonoured on the ground of stoppage of payment as well as for want of sufficient funds in the account of the accused. Lawyer notice sent was replied to alleging untrue facts.

2. The evidence adduced in the matter consisted of the testimony of PWs 1 and 2 and Exts.P1 to P5. The accused herself got examined as DW-1. The defence also examined DW-2 and got marked Exts. D1 to D3.

3. It is the contention of the counsel for the appellant

that the court has dismissed the complaint on the ground that was raised for the first time when DW-1, the accused, mounted the box that the impugned cheque was not issued by her and till then the case set up in the reply notice and when cross examined was that her signed cheque was taken away by one Santhosh, who was the friend of her son and when she subsequently questioned Santhosh, he promised to return the cheque book. It is stated that in the cheque book she had affixed her signature in three cheque leaves. It is the version that subsequently two persons apart from the complainant herein demanded the amounts from her saying that they are in possession of her signed cheque leaves. Ext.D1 is the reply notice sent by the complainant and Ext.D2 is the notice received by her from one Saseendran demanding payment and Ext.D3 is the reply sent by her. It is pointed out that in the above reply notices or when PW1 was cross examined, there was no case or suggestion that the signature in the impugned

cheque is not the one affixed by her. The above case was set up for the first time when she was examined as DW1. It was based on the above version of DW1 that the court below has acquitted her.

4. Counsel for the revision petitioner has sought for providing an opportunity to him to establish the fact that the signature contained in Ext.P1 is that of the accused herself. In such circumstances, I find that the matter requires reconsideration at the hands of the court below. Hence, the finding of the court below is set aside and the matter is remitted back for fresh disposal after permitting the parties to adduce further evidence if they so desire.

The appellant shall appear before the court below on 20-8-2007.

K.R.UDAYABHANU,
JUDGE.

Kvm/-

K.R.UDAYABHANU, J.

CRL.A.NO.141 OF 1999

JUDGMENT

18-7-2007.